

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Developing a Unified Intercarrier)
Compensation Regime) CC Docket No. 01-92
)
)

**REPLY COMMENTS OF
THE NEW JERSEY DIVISION OF RATE COUNSEL**

**RONALD K. CHEN
PUBLIC ADVOCATE**

**SEEMA M. SINGH, ESQ.
DIRECTOR AND
RATE COUNSEL**

Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
(973) 648-2690 - Phone
(973) 624-1047 – Fax
www.rpa.state.nj.us
njratepayer@rpa.state.nj.us

On the Comments:

Christopher J. White, Esq.
Deputy Public Advocate

Date: January 3, 2007

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Developing a Unified Intercarrier)	
Compensation Regime)	CC Docket No. 01-92
)	
)	

REPLY COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL

I. INTRODUCTION

The New Jersey Division of the Rate Counsel (“Rate Counsel”) hereby responds to the initial comments submitted in response to the public notice issued by the Federal Communications Commission (“FCC” or “Commission”) seeking comment on the Missoula Plan phantom traffic interim process and call detail records proposal.¹ On July 24, 2006, the National Association of Regulatory Utility Commissioners’ (“NARUC”) Task Force on Intercarrier Compensation (“NTFIC”) filed an intercarrier compensation reform plan (the “Missoula Plan”) with the Commission.² Missoula Plan supporters subsequently filed a written *ex parte* on November 6, 2006, detailing an interim process

¹ / *Comment Sought on Missoula Plan Phantom Traffic Interim Process and Call Detail Records Proposal*, Public Notice, CC Docket No. 01-92, DA 06-2294 (WCB, November 8, 2006). *See* 71 Fed. Reg. 67509. The reply comment deadline was extended from December 22, 2006 to January 5, 2007. *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Order*, Rel. December 20, 2006.

² / *Comment Sought on Missoula Intercarrier Compensation Reform Plan*, Public Notice, CC Docket No. 01-92, DA 06-1510 (WCB, July 25, 2006). *See* 71 Fed. Reg. 45510.

to address phantom traffic and the creation and exchange of call detail records.³ As the comments in this proceeding demonstrate, both the interim and uniform process outlined in the Missoula Plan and supplemented in the November 6th *ex parte* fail to solve many of the causes of phantom traffic, shift burdens from carriers that terminate traffic, and implicitly implement policy changes on issues that the Commission has not yet addressed explicitly.

Based on its review of initial comments, the Rate Counsel continues to support efforts to ensure that carriers pay for their use of the public switched telephone network (“PSTN”), and timely action by the Commission to address the problem phantom traffic. However, it is evident that there is little agreement as to the extent and causes of the phantom traffic problem. Finally, the Rate Counsel urges the Commission to heed the warnings of many commenters that phantom traffic be defined properly, and also urges the Commission to resist the efforts of the Plan supporters to make policy with regard to VoIP telephony under the guise of an industry solution for phantom traffic. The Missoula Plan phantom traffic solution fails to address phantom traffic adequately, seeks to make new policy, and should be rejected by the Commission for the reasons discussed in detail below.

II. ANALYSIS OF COMMENTS

A review of the comments submitted in response to the Commission’s request for input regarding the phantom traffic solution shows that there is no consensus of support even for the limited interim phantom traffic proposal. A broad range of carriers urge the

³ / Letter from Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92 (filed November 6, 2006) (“Missoula Plan Nov. 6 *Ex Parte*”). See, also, FCC Public Notice, “Comment Sought on Missoula Plan Phantom Traffic Interim Process and Call Detail Records Proposal,” DA 06-2294, November 8, 2006.

Commission to reject the plan,⁴ while many commenters urge the Commission to approve the plan.⁵ Also, a segment of stakeholders, despite opposing the Missoula Plan, do support Commission adoption of the proposed phantom traffic solution. The Ohio Public Utility Commission (“Ohio PUC”) supports the plan to implement the phantom traffic solution, but states that implementation should be done independently of the Missoula Plan (which the Ohio PUC does not support).⁶ The Ohio PUC states that by “linking the phantom traffic solution to the full adoption of the Plan, there is the distinct possibility that a workable solution may be left on the table.”⁷ The Ohio PUC states that it does not agree with all of the process details outlined by Plan supporters, yet states “the Ohio Commission is of the opinion that it is best left to those in the telecommunications industry to comment on the mechanics of any such proposal. So long as the necessary information is adequately and reliably transferred among and between carriers, the industry should decide how this is best accomplished.”⁸ US Telecom expresses support for all of the proposals (as outlined in Section V.E. of the Missoula Plan and the Nov. 6 *ex parte*).⁹ However, support appears to be of the “this is the best we can do” variety or the “let’s just get it done” attitude. The United States Telecom Association (“US

⁴ / See, e.g., Verizon, at 10; Voice on the Net Coalition (“VON Coalition”), at 1; Sprint Nextel, at 1; National Cable & Telecommunications Association (“NCTA”), at 3; Qwest Communications International, Inc. (“Qwest”), at 2; CTIA – The Wireless Association (“CTIA”), at 1; Cavalier Telephone, LLC, McLeodUSA Telecommunications Services, Inc., Pac-West Telecomm, Inc., and RCN Corporation (“Joint CLEC Commenters”), at 1, 3.

⁵ / See, e.g., US Telecom, at 1; Iowa Utilities Board, at 1; Ohio PUC, at 3; Independent Telephone and Telecommunications Alliance and Balhoff and Rowe, LLC (“ITTA”), at 1 – adopt “with minimal modifications”; Fairpoint Communications, at 1; American Public Communications Council, at 4; Western Telecommunications Alliance, at 1.

⁶ / Ohio PUC, at 3.

⁷ / *Id.*, at 4.

⁸ / *Id.*, at 5.

⁹ / US Telecom, at 1.

Telecom”) states that it “does not wish to make the perfect the enemy of the good, and it much prefers the Missoula Interim Plan to the prospect of further delay in the adoption of any solution.”¹⁰ US Telecom continues:

The Interim Plan is not, and does not pretend to be, the final word in addressing phantom traffic. On a longer term basis, any solution must apply to all carriers and must account for carriers’ different architectures and technologies. Further, any long term solution must address the proper characterization of VoIP-originated traffic. And finally, any long-term solution must be part and parcel of an overall intercarrier compensation solution, and must be designed to ensure that the proper information is available to support characterizing and billing for traffic under that solution.¹¹

Finally, many comments, although ostensibly supporting the plan, take issue with the plan’s specifics or caution the Commission with regard to the unintended consequences of adoption of the interim plan. Rate Counsel urges the Commission not to leave the industry to take care of the details. A review of the phantom traffic solution clearly indicates that there is much more at stake than simple mechanics. Despite proposing that the Commission leave the details to the industry, the Ohio PUC cautions the FCC to “avoid implementations that could have unintended consequences” in referring to IP telephony and seeks assurance that the adopted rules do not create entry barriers.¹²

Industry statements regarding imminent harm are speculative and inflated.

Rate Counsel agrees with the Independent Telephone and Telecommunications Alliance (“ITTA”) that “[t]he resolution of the phantom traffic issue must affirm the principle that those who use the network must contribute to pay for the network.”¹³ The

¹⁰ / *Id.*, at 5.

¹¹ / *Id.*, at 7.

¹² / Ohio PUC, at 5.

¹³ / ITTA, at 2.

Rate Counsel also concurs with ITTA that addressing phantom traffic may be “the necessary prerequisite to accurately addressing broader intercarrier compensation issues.”¹⁴ However, as stated by Qwest, portions of the interim phantom traffic solution may have merit, but the plan is flawed.¹⁵ Furthermore, proponents of the solution have failed to provide concrete evidence of the problem.

While admitting that phantom traffic is difficult to estimate, the ITTA asserts that the costs are “significant” and that phantom traffic “appears to account for as much as twenty percent of some terminating carriers’ minutes, and this percentage appears to be growing.”¹⁶ Fairpoint Communications (“Fairpoint”) asserts that phantom traffic is “a real and growing problem” yet also fails to provide any specific evidence.¹⁷ Despite industry suggestions that phantom traffic is a critical issue that needs immediate action, Verizon claims that “there is no record evidence that substantiates the various assertions about the extent or the causes of ‘phantom traffic,’ despite the fact the mid-sized and rural carriers have been claiming for years that ‘immediate action is needed to solve this supposed problem.’”¹⁸

The Commission should consider carefully whether the benefits of the current proposal outweigh the purported costs, complexity, and new opportunities for arbitrage

¹⁴ / *Id.*, at 5.

¹⁵ / Qwest, at 12.

¹⁶ / ITTA, at 3.

¹⁷ / Fairpoint, at 2. The Western Telecommunications Alliance (“WTA”) states that phantom traffic “appears to exceed 20 percent of the traffic terminated by some rural telephone companies.” WTA, at 1. The WTA asserts, however, that the plan “will give terminating carriers and the Commission a much more accurate and complete picture of the nature, amount and origin of the terminating traffic subject to intercarrier compensation.” *Id.*, at 3. The WTA’s acknowledgement that the Commission presently lacks an accurate and complete picture of terminating traffic implies that the WTA and others’ estimates of the percentage of traffic that is phantom traffic may not be entirely accurate.

¹⁸ / Verizon, at 1.

associated with the proposal.¹⁹ Such an analysis appears to be difficult with little evidence detailing the problem. The National Cable & Telecommunications Association (“NCTA”) aptly describes the situation:

NCTA believes the interim rules proposed in the Missoula Phantom Traffic Proposal are far more burdensome than is warranted. Specifically, there is no evidence in the record to demonstrate the size of the phantom traffic problem, the cost of the proposed solution, or whether the proposed rules will significantly reduce the problem. Consequently, there is no way that the Commission can conclude that the benefits of this proposal will outweigh the costs.²⁰

...

For example, the record contains no hard data quantifying the phantom traffic problem, no affidavits from any technical, operational, or financial experts discussing the problem or demonstrating the effect of these new requirements, and no evidence that the benefits of implementing the all of the requirements of the Missoula Phantom Traffic Proposal would outweigh the substantial costs.²¹

Also, the Rate Counsel shares the VON Coalition’s concern that “the Commission is considering expensive, backward-looking fixes to the phantom traffic issue, but the problem has not been adequately quantified and the costs and burdens of the proposed solutions have not been adequately examined.”²² The CTIA similarly expresses concern regarding the cost of the proposal as opposed to simpler solutions that may be available.²³

¹⁹ / Verizon claims the phantom traffic solution will cost hundreds of millions of dollars to implement. Verizon, at 2. Verizon estimates it will cost Verizon alone \$250 million to implement the network upgrades and reconfigurations needed for the plan. *Id.*, at 10. The Rate Counsel is concerned by Verizon’s comments that there is a “separate amendment proposed by the supporters of the Missoula Plan in their comments, which would enable rate-of-return carriers – and only rate-of-return carriers – to recover from the Restructure Mechanism ‘[a]dditional costs caused by the Plan . . . resulting from implementation of the Phantom Traffic proposal.’” *Id.*

²⁰ / NCTA, at 3.

²¹ / *Id.*, at 5.

²² / VON Coalition, at 5. *See, also*, Joint CLEC Commenters, at 3.

²³ / CTIA, at 4.

Finally, it unclear whether estimates regarding the percentage of traffic that is phantom traffic includes traffic for which terminating carriers would “like” payment as opposed to traffic for which they are actually entitled to payment. For example, Sprint Nextel contends that most of the phantom traffic is the result of disputes over existing law and not due to intentional obfuscation.²⁴ Verizon suggests that plan proponents often mix two types of traffic together in their discussion: (1) traffic where the terminating carrier cannot identify the carrier responsible for traffic and (2) traffic for which the jurisdiction, and thus the rate, is unknown.²⁵ Cavalier Telephone, LLC, McLeodUSA Telecommunications Services, Inc., Pac-West Telecomm, Inc., and RCN Corporation (“Joint CLEC Commenters”) propose that:

. . . there is broad industry agreement that “Phantom Traffic” includes only traffic missing key call detail necessary to identify and bill the carrier responsible for payment; it does not include traffic for which carriers dispute the appropriate intercarrier compensation mechanism. Yet in attempting to quantify the “harms” associated with phantom traffic, it is clear that some parties are including traffic that does not fit the widely held definition.²⁶

This blending of two types of traffic in the phantom traffic discussion is misleading. The following section discusses this issue further.

The Commission should be wary of equating phantom traffic and VoIP traffic.

A review of initial comments suggests that the Commission and stakeholders should exercise caution when addressing the phantom traffic problem, particularly with respect to defining such traffic. Although the Commission should resolve both the phantom traffic problem and determination of whether access charges apply to VoIP

²⁴ / Sprint Nextel, at 4.

²⁵ / Verizon, at 2-3.

²⁶ / Joint CLEC Commenters, at 3-4.

traffic, these issues are distinct. Sprint Nextel suggests that the phantom traffic argument “conflates two distinct issues.” The first is the identification of the party that originated the traffic, and the second is the appropriate jurisdictional treatment of that traffic.²⁷ Efforts to conflate the problems related to traffic labeling with the determination of traffic jurisdiction should be rejected. CTIA states:

Probably the most effective way for the Commission to address this issue is by clarifying what does not constitute “phantom traffic”: (1) Traffic that contains the appropriate call identifying information for the type of call yet carriers dispute the appropriate rate based on differing interpretations of existing FCC rules (e.g., intraMTA calls subject to reciprocal compensation are not “phantom traffic”); or (2) Traffic without correct signaling because of limitations of the network technology in use, especially when these limitations are attributable to routing specified by the rural ILEC.²⁸

The Commission should refrain from adopting an industry “solution” that includes a policy determination regarding the applicability of access charges to VoIP traffic.

The phantom traffic proposal is much more than an effort to create a framework to exchange call detail records. NCTA aptly observes that:

[T]he proposed permanent rules include special provisions applicable to VoIP-originated traffic. Because disputes regarding the proper rate to charge for VoIP-originated traffic stem from uncertainty as to regulatory classification of such traffic, not from inadequate labeling, we do not believe phantom traffic rules are the appropriate vehicle for resolving these issues.²⁹

The VON Coalition similarly observes:

Despite frequent conflation, there is a difference between identifying traffic and deciding which intercarrier compensation charge should apply. While the Missoula phantom traffic proposal represents itself as dealing

²⁷ / Sprint Nextel, at 4. Sprint Nextel suggests that “[b]oth of these issues involve interpretations of law and policy, however, and will not be resolved through additional record exchange obligations.” *Id.*

²⁸ / CTIA, at 3.

²⁹ / NCTA, at footnote 6.

with “industry standards for the creation and exchange of call information,” in reality, Appendix B seeks to impose a compensation rate on VoIP traffic that reflects a blend of intrastate and intrastate switched access and reciprocal compensation rates. Moreover, a major omission from the plan is the fact that carriers terminating calls to VoIP providers are not required to identify traffic and pay reciprocal compensation under this proposal, thus, such [a] proposal would be in conflict with Section 251(b)(5) of the Act.³⁰

Verizon also notes the inclusion of VoIP traffic and the continued absence of guidance from the Commission on VoIP access charge policy.³¹ Verizon states that “[t]he Commission’s first express ruling on the appropriate rate(s) for VoIP-to-PSTN traffic should occur when it issues a substantive ruling in the Intercarrier Compensation docket, not in the context of an ‘interim’ plan to address so-called ‘phantom traffic.’”³² Rate Counsel concurs with Verizon that the Commission should address VoIP-to-PSTN traffic explicitly in the intercarrier compensation docket rather than implicitly through an “interim plan.”

Rate Counsel agrees that the fate of VoIP traffic should not be decided by inclusion in an industry-designed interim phantom traffic plan. However, to the extent that the Commission is unable to adopt comprehensive intercarrier compensation reform in a timely manner, it should provide the industry with clear guidelines and adopt a policy with respect to VoIP traffic. There continues to be confusion and disagreement as to the applicability of the Commission’s *AT&T IP Telephony Order*. Rate Counsel urges the Commission to provide clarification.³³ The Missoula Plan phantom traffic proposal to place the ILECs (or terminating carriers) in the position of final arbiter as to who is

³⁰ / VON Coalition, at 9.

³¹ / Verizon, at 2.

³² / *Id.*, at 2-3. *See, also, Id.*, at 33-34.

³³ / Rate Counsel, at 5.

responsible for access charges is not competitively neutral, and therefore should be rejected.³⁴ Joint CLEC Commenters' description of the phantom traffic solution as the "Missoula proponents' attempt at backdoor regulation of VoIP"³⁵ is on point.

Several commenters suggest that the Commission should address jurisdictional issues as part of overall intercarrier compensation reform. Joint CLEC Commenters state:

If, as proposed in the notice, the Commission adopts phantom traffic rules as an interim step in intercarrier compensation reform, it must not attempt to resolve disputes concerning the appropriate intercarrier compensation for traffic that is not in fact phantom traffic. Thus, the issue of how certain traffic types—such as virtual NXX ("VNXX"), foreign exchange ("FX"), and IP-to-PSTN or PSTN-to-IP traffic—should be classified for intercarrier compensation purposes must be addressed holistically as part of this proceeding, in accordance with the Act.³⁶

Sprint Nextel echoes this concern stating: "Given the ambiguity surrounding the term "phantom traffic" and the many dockets affecting intercarrier compensation currently pending before the Commission, however, any order in this area will inevitably be read as a pronouncement on many different policy issues."³⁷ Qwest's admonition that the interim process has the Commission approving changes in law before those matters of policy have been decided has merit. For example, Qwest suggests that the Process for Identification of VoIP-Originated Traffic "in addition to imposing enormous new costs on carriers like Qwest by requiring them to implement an unnecessarily complex new set of factoring rules just for voice over Internet Protocol ("VoIP") traffic, have the Commission pre-judge still other significant issue underlying the broader Missoula Plan.

³⁴ / See *Id.*, at 6; Rate Counsel Reply Comments in Docket No. 05-276 re SBC/VarTec Petitions, at 4-5, 10-11.

³⁵ / Joint CLEC Commenters, at 13.

³⁶ / *Id.*, at 4.

³⁷ / Sprint Nextel, at 10.

The proposal assumes that two of the Plan's most controversial provisions – the new number-based jurisdiction rule and the proposal that VoIP traffic be deemed automatically 100% interstate – would become law.”³⁸

Commenters have demonstrated why the phantom traffic solution put forth by the proponents of the Missoula Plan is unworkable and should be rejected.

Apart from the policy reasons discussed above, commenters have submitted a host of reasons that the proposed solution should be rejected. These comments do not discuss all of the reasons and details, and the Rate Counsel only highlights a few in these reply comments. However, an analysis of the proposal as well as of the initial comments suggests that the phantom traffic proposal, like the Missoula Plan, seeks to shift costs from incumbents to competitors.³⁹

Commenters also make the following specific criticisms with respect to the proposed phantom traffic solution, which Rate Counsel recommends the Commission heed:

- The implementation time frame is too short;⁴⁰
- The solution fails to address terminating carriers' own limitations;⁴¹
- The proposal requires originating and/or transit carriers to bear the burden of creating call records and summary reports despite having already provided CPN and CN in the SS7 signaling stream to terminating carriers;⁴²

³⁸ / Qwest, at 3.

³⁹ / See, e.g., Sprint Nextel, at 3; Joint CLEC Commenters, at 14.

⁴⁰ / Verizon asserts that “[t]he Proposal neither acknowledges the specific network upgrades that will be required nor explains how carriers could complete those upgrades within such a short time frame.” Verizon, at 23.

⁴¹ / Joint CLEC Commenters suggest that “carriers may significantly reduce their percentage of apparent phantom traffic simply by reviewing and upgrading their own internal capabilities for recording and billing traffic.” Joint CLEC Commenters, at 5. Sprint Nextel observes that the interim proposal will not overcome many infrastructure issues including, among others, the inability to transmit telephone number information with Feature Group D traffic in certain situations; in instances where traffic traverses two tandems; portable VoIP traffic; and wireless traffic. Sprint Nextel, at 5-6.

- The proposal fails to address CMRS roaming calls;⁴³
- The proposal fails to acknowledge that, in some instances, the customer's equipment limits the ability of originating carrier to send correct information.⁴⁴
- The arbitration requirements are inappropriate;⁴⁵
- The use of the Commissions' accelerated docket is inappropriate;⁴⁶
- The enforcement provisions are simply too complex and will result in further litigation;⁴⁷

Upon examination, simpler solutions may be preferred to the ones set forth in the Missoula Plan phantom traffic proposal; however, the Commission should clarify that ILECs should not, under any proposal, engage in "self help."

Verizon asserts that there are already several mechanisms that the ILECs can use to bill for phantom traffic.⁴⁸ Verizon suggests: "As long as the identity of the responsible carrier is known, carriers can bill for terminating traffic using a long-standing industry

⁴² / Sprint Nextel objects to this and the interim proposal that originating carriers compensate tandem transit on a per-record basis. Sprint Nextel, at 9. Qwest characterizes the proposal as requiring that transit providers, rather than originating carriers, be responsible for creating and distributing call summary and detail records and thus opposes the plan. Qwest, at 13. CTIA also interprets the plan as placing tandem transit providers (with whom wireless carriers interconnect) in the position of creating and transmitting call detail records and opposes this aspect of the plan. CTIA, at 5, 13.

⁴³ / Joint CLEC Commenters, at 9.

⁴⁴ / *Id.*, at 9.

⁴⁵ / Sprint Nextel contends that the existing Section 252 arbitration process and Section 208 complaint process are sufficient to address disputes, and that the proposed penalties would only "increase litigation in this already contentious area." Sprint Nextel, at 15. Qwest agrees with Sprint Nextel, urging the Commission to reject the Missoula Plan's proposed application of the Section 251 and 252 requirements of the *T-Mobile Order* to wireline carrier interconnection agreements. Qwest, at 12-13.

⁴⁶ / Verizon, like the Rate Counsel, is troubled by the proposal's reliance on the Commission's accelerated docket (which would require a decision within 60 days). "Such a proposal ignores the complexity that would be involved in investigating such a complaint." Verizon, at 31.

⁴⁷ / *See, e.g.,* Sprint Nextel, at 3; NCTA, at 6. Verizon asserts that the penalties are unworkable. Verizon asks how one would mandate direct interconnection for a CLEC or IXC and also what the definition of a "chronic" violator would be. Verizon, at 32. CTIA also questions the rules that would require "chronic" violators to interconnect directly, calling such a requirement contrary to the Act and suggests that the enforcement rules will surely lead to "costly and protracted litigation." CTIA, at 12.

⁴⁸ / Verizon, at 4-5.

method known as ‘factoring’ to approximate the jurisdiction of the traffic received and to determine the rate to apply, both for traffic that terminates on the carrier’s own network as well as traffic that merely transits the carrier’s network.”⁴⁹ Similar to the Rate Counsel, the VON Coalition cautions the Commission about permitting ILEC self-help actions. The VON Coalition recommends that the FCC reject ILEC assertions that they have the unilateral right to block calls that they deem improperly labeled.⁵⁰

The VON Coalition suggests that there are alternative, less costly, ways to account for phantom traffic than the complex phantom traffic solution proposed by the Missoula Plan supporters.⁵¹ The VON Coalition asserts that the FCC need only strictly enforce its current requirement that the calling party number or charge numbers be included where SS7 is used and automatic number identification is used when multi-frequency signaling is used.⁵² Several commenters support Commission expansion of existing rules to include the requirement to populate CPN and CN parameters of SS7 signaling stream. The VON Coalition notes that a carrier is already required to transmit the calling party number with an interstate call.⁵³ Similarly, Joint CLEC Commenters suggest that the Commission should review and strengthen its call details ruling thus resolving “the majority of true phantom traffic issues.”⁵⁴ NCTA states that this is the “more narrow approach” supported by CTIA, Verizon, and Qwest as well.⁵⁵ Verizon

⁴⁹ / *Id.*, at 7.

⁵⁰ / VON Coalition, at 8.

⁵¹ / *Id.*, at 6.

⁵² / *Id.*, at 6-7.

⁵³ / *Id.*, at 3.

⁵⁴ / Joint CLEC Commenters, at 4.

⁵⁵ / NCTA, at 8.

suggests that such an approach might ensure that “such willful manipulation [of the CPN] is even more clearly unlawful.”⁵⁶

Commenters convincingly argue that the simpler, more cost effective manner to deal with phantom traffic may be to adopt uniform rates (something the Missoula Plan fails to achieve).

The Rate Counsel concurs with Sprint Nextel’s analysis:

Many aspects of the Interim Process are consistent with current standard industry practices and are not objectionable per se. The adoption of the proposal, however, would not address the fundamental intercarrier compensation problems facing industry and the FCC, nor would it resolve the so-called “Phantom Traffic” problem. “Phantom Traffic,” as described by the Missoula supporters, is largely the result of technical limitations within the existing telecommunications network and legal disputes over the appropriate rating and routing of traffic. While there may be bad actors that intentionally manipulate data, the primary cause of “phantom traffic” is the existing intercarrier compensation regime, not the adequacy of current records exchange.⁵⁷

Sprint Nextel suggests that the uniform process would largely be irrelevant if the FCC simply adopted a low uniform intercarrier compensation rate instead of “disparate rate structures and inefficient jurisdictional traffic segregation.”⁵⁸ This view is shared by the NCTA, stating that a “better approach” would be to “equalize termination rates” and adopt new signaling requirements.⁵⁹ NCTA continues by stating that equalizing rates would result in erasing “any economic advantage associated with characterizing traffic in

⁵⁶ / Verizon, at 9. However, Verizon expresses concern that the rules contemplated do not do anything to prevent carrier manipulation of the “from number” to change jurisdiction. *Id.*, at 26.

⁵⁷ / Sprint Nextel, at 2.

⁵⁸ / *Id.*, at 2.

⁵⁹ / NCTA, at 4.

a particular way . . .”⁶⁰ CTIA similarly suggests that unifying rates and structures would be more useful.⁶¹

III. CONCLUSION

As stated in the Rate Counsel’s initial comments: “Commission action that resolves phantom traffic is crucial to ensure that all carriers pay for originating and terminating traffic.”⁶² . . . Carriers’ failure to pay their fair share could lead to higher end user rates for consumers.”⁶³ The Rate Counsel supports a stand-alone solution to phantom traffic only if that solution is competitively neutral and workable. The Rate Counsel also supports Commission adoption of clear policy with respect to the applicability of access charges to VoIP traffic. However, neither the Missoula Plan nor the interim Phantom Traffic Solution meets these goals. Sprint Nextel claims that the interim process is “ineffective and a distraction from the larger issues plaguing the intercarrier compensation system.”⁶⁴ The Rate Counsel agrees, much like the Missoula Plan itself, the details are scant in some areas, confusing in others and the plan is focused on shifting the burden of accounting for traffic away from terminating ILECs and in creating policy with respect to VoIP traffic. Finally, the phantom traffic solution attempts to merge two distinct traffic identification issues: that of originating carrier identity and that of jurisdiction (or applicability of access charges). Rate Counsel agrees

⁶⁰ / *Id.*, at 7.

⁶¹ / CTIA, at 2.

⁶² / Rate Counsel, at 4.

⁶³ / *Id.*, at 5, citing Reply Comments re Frontier Petition, at 6. *See, also*, Initial Comments re Frontier Petition, at 11-12, Reply Comments re SBC/VarTec Petitions, at 1.

⁶⁴ / Sprint Nextel, at 1.

with Sprint Nextel's conclusion that "it is entirely unclear why the FCC should devote resources to the establishment and enforcement of rules that fail to address the underlying cause of a large portion of phantom traffic."⁶⁵

Respectfully submitted,

RONALD K. CHEN
PUBLIC ADVOCATE

SEEMA M. SINGH, ESQ.
DIRECTOR AND RATE COUNSEL

By: *Christopher J. White*
Christopher J. White, Esq.
Deputy Public Advocate

⁶⁵ / *Id.*, at 6, citing Missoula Plan at V.B.1.